

REMARKS

Claims 1-66 are pending with claims 1, 27, 48 and 49 being independent. Claim 49 has been amended. Reconsideration and a notice of allowance of all pending claims are respectfully requested.

Rejections under 35 U.S.C. § 101

Claims 49-66 stand rejected under 35 U.S.C. 101 for allegedly being directed toward non-statutory subject matter. While Applicant disagrees, claim 49 has been amended to expedite the prosecution of the present application.

Amended claim 49 recites a computer software embodied on a tangible medium, which defines structural interrelationships between the computer software and the tangible medium, and thus claim 49 is directed to statutory subject matter. (*See* MPEP 2106.01(I).)

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

MPEP 2106.01 (I).

Further, amended claim 49 recites a practical application of the instructions included in the computer software that causes a computer system to perform operations including presenting a user-interface and transferring information. Therefore, independent claim 49 and its dependent claims 50-66 are directed to statutory subject matter as defined in MPEP 2106(I).

Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-5, 10-27, 29-49 and 51-66 stand rejected under 35 U.S.C. 103(a) as allegedly being obvious over the combination of U.S. Patent Application No. 2006/0074792 to Wagoner et al. ("Wagner") and U.S. Patent No. 6,133,912 to Montero et al. ("Montero"). Applicant respectfully traverses the rejections and their underlying rationale.

With respect to claim 1, the proposed combination of Wagoner and Montero fails to disclose or suggest each and every element of claim 1. In particular, the proposed combination fails to disclose or suggest the claimed ***communicating the dynamic pricing information selected by the first user to a second user for display at a modular computer program***, as recited in claim 1. The Examiner contends that “[h]aving accessed the Data Center system, the Data Center system [in Wagoner] can display on the vehicle dealer terminal a scrolling ticker containing information regarding the one or more vehicle auctions contained in the auction center (i.e., dynamic pricing information).” (See, Office Action Dated November 1, 2007 at pg. 12, citing to Wagoner at ¶ [0103].) However, the Examiner seems to be addressing only one element (i.e., dynamic pricing information) of the many claimed elements in claim 1, and thus the rejection fails to establish *prima facie* obviousness of the claimed features. (See, MPEP 2143.03.)

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending there from is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

MPEP 2143.03.

In claim 1, the recited ***dynamic pricing information is selected by the first user*** and this ***dynamic pricing information selected by the first user is communicated to a second user for display at a modular computer program***. The proposed combination of Wagoner and Montero fails to disclose or suggest that the claimed ***dynamic pricing information is selected by the first user*** and that the ***dynamic pricing information is communicated to a second user*** as recited in claim 1. As stated above, the cited portions of Wagoner discloses that “[i]n another embodiment, the auction data may be displayed on a vehicle terminal. The vehicle dealer terminal is a terminal used by a vehicle dealer to access the Data Center system.” (See Wagoner T ¶ [0103].) However, Wagoner fails to disclose or suggest whether the auction data displayed on the vehicle dealer terminal includes ***dynamic pricing information selected by the first user*** as recited in claim 1. Wagoner is simply disclosing an alternate remote location for viewing the auction data,

and being able to view the auction data at a remote location discloses nothing about a relationship between the data and the first user. Therefore, displaying the auction data on a vehicle dealer terminal in Wagoner cannot reasonable be construed as *communicating the dynamic pricing information selected by the first user to a second user for display at a modular computer program* as recited in claim 1.

Further, the addition of Montero fails to alleviate the deficiencies of Wagoner. Montero is directed to providing “an apparatus and technique for delivering information to subscribers on a communication network such that the information and the subscriber’s selected data is simultaneously viewable by the subscriber.” (See Montero at Col. 2, ll. 56-60.) In Montero, information sent to the subscribers are obtained from multiple INFO servers 120, which “continuously transmit information, such as advertisements, news, messages, web pages, data packets, stock tickers, announcements, updates, and like, to form a sequence of information.” (See Montero at Col. 4, ll. 63-66.) While Montero provides information, such as advertisements to the subscribers, Montero, similar to Wagoner, is silent as to whether the claimed *dynamic pricing information* is *selected by the first user* and whether this *dynamic pricing information selected by the first user* is *communicated to a second user for display at a modular computer program* as recited in claim 1.

In addition, the Examiner concedes that Wagoner fails to disclose the claimed *presenting to the first user of the modular computer program an interactive visual indication of a user-attractive resource available on the computer network, the user-attractive indication of a user-attractive resource available on the computer network, the user-attractive resource is visually embedded within the stream of dynamic pricing information displayed by the modular computer program*, as recited in claim 1. (See Office Action dated April 27, 2006, pg. 5, ll. 9-12.) The addition of Montero fails to alleviate the deficiencies of Wagoner.

While Montero provides information, such as advertisements to the subscribers, Montero is silent as to whether the information in Montero is *visually embedded within the stream of dynamic pricing information displayed by the modular computer program*, as recited in claim 1. Even if the information displayed in Montero could reasonably be construed as the claimed *user-attractive resource*, Montero would still fail to teach or suggest that the information is *visually embedded within the stream of dynamic pricing information*, as recited in claim 1. Therefore, even if, arguendo, the alleged dynamic pricing information in Wagoner could somehow be

combined with the information in Montero, the hypothetical combination of Wagoner and Montero would still fail to teach or suggest each and every feature of claim 1, including the claimed *user-attractive resource is visually embedded within the stream of dynamic pricing information displayed by the modular computer program*, as recited in claim 1. Further, both Wagoner and Montero fail to teach or suggest a desirability to embed information in Montero within the alleged stream of dynamic pricing information in Wagoner. For at least these reasons, claim 1 is patentable over the proposed combination of Wagoner and Montero.

Independent Claims 27, 48, and 49

Independent claims 27, 48, and 49 recite similar elements as claim 1, and are patentable over the proposed combination of Wagoner and Montero for at least the reasons set forth with respect to claim 1 above.

Dependent Claims 3-5, 10-26, 29-47, and 51-56

Dependent claims 3-5, 10-26, 29-47, and 51-56 depend from claims 1, 27 and 49, and are patentable over the proposed combination of Wagoner and Montero for at least the reasons set forth with respect to claims 1, 27, and 49 above.

Dependent Claims 2, 6-9, 28 and 50

Claims 2, 6-9, 28 and 50 stand rejected under 35 U.S.C. § 103(a) based on the proposed combination of Wagoner, Montero, and U.S. Patent No. 6,133,912 to Bowman-Amuah. The rejections and their underlying reasoning are respectfully traversed.

Claims 2, 6-9, 28 and 50 depend from claims 1, 27, and 49, and are patentable over the combination of Wagoner and Montero for at least the reasons set forth with respect to claims 1, 27 and 49 above. The addition of Bowman-Amuah fails to alleviate the deficiencies of Wagoner and Montero.

Bowman-Amuah is directed to a system and method “for interacting with a user over a network for personalizing a website.” (See Bowman-Amuah at Abstract.) In addition, Bowman-Amuah discloses using Java to “create robust User Interface (UI) components.” (See Bowman-Amuah at Col. 10, ll. 12-21.) However, Bowman-Amuah suffers from the same deficiencies as Wagoner and Montero with respect to the claimed elements of independent claims 1, 27 and 49. Merely disclosing the use of Java programming is not sufficient to teach or suggest each and every features of independent claims 1, 27 and 49. For example, Bowman-Amuah fails to disclose or suggest the claimed Applet *computer program* capable of *receiving dynamic pricing*

information, displaying the received dynamic pricing information, receiving from the first user information, sending the received selection information, and presenting to the second user as recited in claims 1-2, 27-28, and 49-50. For at least these reasons, claim 2, 6-9, 28 and 50 are patentable over the proposed combination of Wagoner, Montero and Bowman-Amuah.

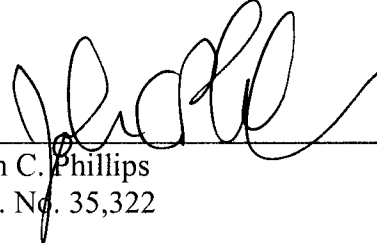
CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this paper.

For the foregoing reasons, all pending claims are in condition for allowance, and a notice to that effect is requested.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,



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